

10/90/90  
31051 U.S. PTO

PATENT  
ATTORNEY DOCKET NO.: 046914-5001-01

31051 U.S. PTO  
09/874249  
06/06/01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
**BOX PATENT APPLICATION**  
Washington, D.C. 20231

PRIOR APPLICATION: 09/688,859

Examiner: Unassigned  
Group Art Unit: 2152

**CONTINUATION-IN-PART PATENT APPLICATION**  
**TRANSMITTAL UNDER 37 C.F.R. § 1.53(b)**

This is a request for filing a patent application under 37 C.F.R. § 1.53(b).

1. This application is a Continuation-in-Part patent application under 37 C.F.R. § 1.53(b), of pending prior application no. 09/688,859, filed on October 17, 2000.

Inventor(s): Robert Penn CAGLE, Patrick J. MCEVOY and Kevin Sean SHEEHAN

For: **METHOD AND APPARATUS FOR HA SERVER**

2. The papers enclosed are as follows:

31 Page(s) of specification including  
1 Title Page  
5 Page(s) of claims  
1 Page of abstract  
27 Sheet(s) of drawings containing 27 Figures

3. Amendments

☒ [X] A newly executed (original or copy) oath or declaration is enclosed.

☐ [ ] An oath or declaration is not enclosed. This application is being filed under 37 C.F.R. § 1.53(f). Applicant(s) await notification from the Patent and Trademark Office of the time set for filing the declaration and paying the filing fees.

## 5. Relate Back - 35 U.S.C. § 120

☒ Amend the specification by inserting before the first line the sentence:

“This is a continuation-in-part of copending Application(s) No. 09/688,859  
filed on October 17, 2000.”

## 6. Priority - foreign applications under 35 U.S.C. § 119(a)-(d) or § 365(b) or PCT international applications under 35 U.S.C. § 365(a) designating at least one country other than the U.S.

☐ Priority of the following foreign application(s) is/are claimed:

Country	Application No.	Filed

Certified copy(ies): ☐ is/are attached.

☐ will follow.

☐ was/were filed in prior U.S. Application No. \_\_\_\_\_ on \_\_\_\_\_.

## 7. Assignment

☒ An assignment of the invention to Continuous Computing Corporation and a PTO Form-1595, Recordation Form Cover Sheet, will be provided at a later date.

## 8. Fee Calculation (37 C.F.R. § 1.16)

CLAIMS FOR FEE CALCULATION				
	Number Filed	Number Extra	at Rate of	Basic Fee Utility \$710.00 Design \$355.00
Total Claims (37 C.F.R. § 1.16(c))	24 - 20 =	4	\$ 18.00 each =	+ \$ 72.00
Independent Claims (37 C.F.R. § 1.16(b))	4 - 3 =	1	\$ 80.00 each =	+ \$ 80.00
Multiple dependent claim(s), if any (37 C.F.R. § 1.16(d))			\$270.00	+ \$ 0
SUB-TOTAL =				\$ 862.00
Reduction by ½ for filing by a small entity				- \$ 431.00
TOTAL FILING FEE =				\$ 431.00

## 9. Fee Payment

☐ Not Enclosed. **NO FEE IS BEING PAID BY CHECK OR DEPOSIT ACCOUNT AT THIS TIME.**

This application is being filed under the provisions of 37 C.F.R. § 1.53(f).  
Applicant(s) await notification from the Patent and Trademark Office of the time set for filing the Declaration and paying the filing fees.

☒ Enclosed.

A check(s) in the amount of \$ 431.000 to cover the application filing fee and additional claims fee is enclosed (*small entity*).

☐ The fee for extra claims under 37 C.F.R. § 1.16(d) is not being paid at this time and no authorization is given to charge our deposit account for this fee.

## 10. Small Entity Status is claimed and

- ☐ a statement claiming small entity status is enclosed, or
- ☒ a small entity statement was filed in the prior nonprovisional application and is still proper and desired.

11. ☒ The power of attorney in the prior application is to at least one of the registered practitioners of Morgan, Lewis & Bockius LLP included in the Customer Number provided below to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith, and all correspondence shall be addressed to that Customer Number.

Please address all correspondence to Morgan, Lewis & Bockius LLP at  
**Customer Number: 009629**

12. ☐ Recognize as associate attorney \_\_\_\_\_.  
(name, address, and registration no.)13. ☒ **PETITION FOR EXTENSION OF TIME.** If any extension of time is necessary for the filing of this application, including any extension in the prior application, application no. 09/688,859, filed October 17, 2000, for the purpose of maintaining copendency between the prior application and the present application, and such extension has not otherwise been requested, such an extension is hereby requested, and the Commissioner is authorized to charge necessary fees for such an extension to Deposit Account No. 50-0310.14. ☒ **EXCEPT** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account 50-0310. This paragraph is intended to be an **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

15. Additional papers enclosed:

- ☒ Information Disclosure Statement
- ☒ Form PTO-1449; 34 cited references enclosed
- ☒ Nonpublication Request Form Under 35 U.S.C. 122(b)(2)(B)(i)
- ☐ Declaration of Biological Deposit
- ☐ Submission of "Sequence Listing", computer readable copy and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence.

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

By: Martha J. Hopkins  
Martha J. Hopkins  
Reg. No. 46,277

Dated: **June 6, 2001**

**Customer No. 009629**

**MORGAN, LEWIS & BOCKIUS LLP**

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202-467-7000

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>NONPUBLICATION REQUEST UNDER 35 U.S.C. 122(b)(2)(B)(i)</b>	First Named Inventor		Robert Penn Cagle, et al.
	Title	Method and Apparatus For HA Server	
	Atty Docket Number	046914-5001-01	

I hereby certify that the invention disclosed in the attached application **has not and will not** be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing.

I hereby request that the attached application not be published under 35 U.S.C. 122(b).

6/6/01  
Date

Martha J. Hopkins  
Signature

MARTHA J. HOPKINS  
Typed or printed name

This request must be signed in compliance with 37 CFR 1.33(b) and submitted with the application **upon filing**.

Applicant may rescind this nonpublication request at any time. If applicant rescinds a request that an application not be published under 35 U.S.C. 122(b), the application will be scheduled for publication at eighteen months from the earliest claimed filing date for which a benefit is claimed.

If applicant subsequently files an application directed to the invention disclosed in the attached application in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant **must** notify the United States Patent and Trademark Office of such filing within forty-five (45) days after the date of the filing of such foreign or international application. **Failure to do so will result in abandonment of this application (35 U.S.C. 122(b)(2)(B)(iii)).**

**Burden Hour Statement:** This collection of information is required by 37 CFR 1.213(a). The information is used by the public to request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that request). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.